

Beth McCann
District Attorney

Second Judicial District



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October 8, 2020

Paul Pazen
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting of Dontari Alexander Hudson DOB 06/28/1998, which occurred on July 27, 2020 at 4775 N. Argonne St., Bldg. S., Denver, Colorado

Dear Chief Pazen,

The investigation and legal analysis of the shooting of Dontari Alexander Hudson is complete. I conclude that under applicable Colorado law no criminal charges are warranted against Aurora Police Department Officer Paul Jerothe (301639), Aurora Police Department Officer Brett Iske (309737) and Aurora Police Department Officer Michael Neumeyer (315874). This letter will be posted on our website. Upon completion of the criminal case against Mr. Hudson, our file will be available for interested citizens to review subject to the Colorado Criminal Justice Records Act ("CCJRA") C.R.S §24-72-301 *et. seq.*

STATEMENT OF FACTS

On Monday, July 27, 2020, at approximately 9:40 a.m. the FBI Rocky Mountain Safe Streets Task Force (SSTF) began conducting surveillance on two individuals wanted in connection with a series of armed robberies committed in the Denver Metro Area. One of those suspects was Dontari Alexander Hudson. During the surveillance operation, the SSTF began tracking a stolen red Audi.

At approximately 5:27 p.m., the SSTF located the red Audi parked in front of 4766 N. Andes St., which is located in City and County of Denver, Colorado. Denver Police District 2 Special Crime Attack Team (SCAT) vehicles drove up to 4766 N. Andes St. and positioned their vehicles in front of the red Audi, which was occupied by a female seated in the front passenger seat. The officers detained the female and learned that the driver of the vehicle had entered the garage of 4766 N. Andes St. Officers then cleared the garage and residence.

After the garage and residence were cleared, officers were advised by an SSTF agent that a male matching the description of the suspect wanted in connection with the SSTF operation had just been observed in the apartment complex behind 4766 N. Andes St. The suspect was described as a black male with blond hair, wearing a red shirt, black pants and white shoes. The SSTF agent aired that he had lost sight of suspect near the fitness center, which was to the south of 4766 N. Andes St.

While this information was broadcast, Aurora SWAT Police Officers Michael Neumeyer (315874), Paul Jerothe (301639) and Brett Iske (309737) responded to the area to assist the SSTF and Denver police officers in locating the suspect. All three officers previously were briefed about the SSTF operation, including suspect information and the nature of the underlying crimes.

All three officers were in the same unmarked blue 2018 Ford Expedition, with Officer Neumeyer driving, Officer Jerothe in front passenger seat and Officer Iske in the back seat behind the driver. The three officers were wearing their department issued police SWAT uniforms, which consisted of blue shirts with an embroidered badge on the upper left side and patches on each sleeve, dark blue pants, their duty belts with department-approved handguns, tasers, handcuffs and extra magazines. In addition, the officers had their department-approved Colt M-4 LE. 223 rifles in the passenger areas of the vehicle.

At approximately 5:35 p.m., a mother and daughter walked out of their apartment and opened the doors of a gray 2012 Nissan Rogue to air out the inside of the vehicle because it was hot. As they were standing on each side of their vehicle, a black male with blond hair, wearing a red shirt and dark color pants, approached them and pulled a handgun from his waistband. This male would later be identified as Mr. Hudson. In response to Mr. Hudson brandishing his weapon the mother dropped the keys to the Nissan on the ground and told her daughter to run.

Officers Neumeyer, Jerothe and Iske had just pulled into the apartment complex when they saw Mr. Hudson approach the mother and daughter who were standing near the gray Nissan. As the officers drove near the gray Nissan, Officer Jerothe saw Mr. Hudson reach for a gun in his waistband as Mr. Hudson was talking to the mother and daughter. Due to the expressions on the mother's face, Officer Jerothe believed that Mr. Hudson was carjacking the vehicle and a decision was made to prevent Mr. Hudson from driving away with the Nissan. At this point Mr. Hudson had entered the vehicle and was beginning to back out of a parking spot. Officer Neumeyer drove the Expedition into the side of the Nissan and both vehicles stopped moving.



Figure 1 How the vehicles appeared after the collision. Marker #40 points out a shell casing which was later identified as being fired by Officer Iske.

After the collision, Officer Iske and Officer Jerothe jumped out of the SWAT vehicle with their weapons drawn. Officer Iske gave verbal commands to Mr. Hudson to show his hands and within seconds, Mr. Hudson began to fire at the officers and their vehicle. Officer Iske and Officer Jerothe returned fire, while Officer Neumeyer took cover in the Expedition until he was able to return fire out the front windshield, eventually crawling out the front passenger door. Officer Neumeyer fired additional shots at Mr. Hudson once he was outside the Expedition. During the shooting, Officer Iske was shot in left forearm and upper left arm. Officer Jerothe was shot in the right hand and upper left chest, with the bullet to the chest striking Officer Jerothe's soft body armor under his shirt. Officer Neumeyer was not shot during the incident but did sustain cuts and abrasions as a result of the incident.

Numerous Denver and Aurora police officers responded to the shooting scene after the shots ceased and assisted in transporting Officers Iske and Jerothe to University Hospital for treatment of their gunshot wounds. Mr. Hudson was taken into custody at the scene and later transported to Denver Health Medical Center for treatment of the gunshot wounds he sustained. He is currently in-custody on state and federal charges.

Officer Michael Neumeyer

Officer Neumeyer was interviewed July 30, 2020 at 10:19 a.m.. Prior to making his statement, Officer Neumeyer did not watch his body worn camera footage. Officer Neumeyer provided the following information.

Officer Neumeyer told Denver and Aurora police homicide investigators that he has been an Aurora police officer since 2018. Prior to joining the Aurora Police Department, he was a police officer in Nashville, Tennessee from 2008 to 2012, and in Douglasville, Georgia from 2012 to 2018. In 2018, he joined the Aurora Police Department where he worked as a patrol officer until he was assigned to the SWAT Unit in May 2020.

On this evening, he was working with other SWAT officers in an unmarked Aurora Police Department 2018 Ford Expedition, which had police lights in the front windshield and a large metal push bumper on the front. Officer Neumeyer was driving, Officer Jerothe was in the front passenger seat and Officer Iske was in the back seat behind the driver. Officer Neumeyer was dressed in an Aurora Police Department SWAT uniform and had with him his 9mm Glock 17 Gen 5 handgun with a magazine that holds 17 bullets. He also had one round in the chamber for total of 18 rounds in his handgun.

Officer Neumeyer recalled that during the day they were receiving reports from SSTF about their operations, which included descriptions of alleged suspects and surveillance of the red Audi. Around approximately 5:00 p.m., Officer Neumeyer, Officer Jerothe and Officer Iske were driving westbound on Colfax Ave. when they heard that SSTF had located the red Audi in Green Valley Ranch. Because of how Green Valley Ranch intermingles with Aurora, they decided to do a U-turn and see if they could assist should the red Audi go into Aurora. While en route, they heard over the police radio that the red Audi had pulled into a cul-de-sac and that members of DPD SCAT Units had made contact with occupants of both the car and residence, but that one black male with blond hair, wearing a red shirt, black pants, and white shoes had walked away from the residence.

Officer Neumeyer stated that as they got near Tower Road they received information that the man seen walking away from the red Audi had been spotted near the clubhouse in the apartment complex. As they turned into the apartment complex, Officer Iske saw the suspect and notified Officer Neumeyer where he was in the parking lot. Officer Neumeyer recalled that he saw the suspect approach a gray Nissan and that he was interacting with a female near the car. Several seconds later, the female became hysterical and had her hands up. At that point Officer Jerothe stated that he thought the suspect was carjacking the female, and Officer Neumeyer decided that he could not let the suspect drive away in her car.

When the suspect began to back out in the Nissan, Officer Neumeyer drove his vehicle into the driver's side, hitting the suspect's vehicle around the B-pillar. Officer Neumeyer recalled that he could not see into the Nissan driver's window because it was heavily tinted. After the collision, Officer Neumeyer heard Officer Iske get out behind him and start giving commands, shouting, "put up your hands, put up your hands." Officer Neumeyer did not get out of the vehicle because he did not want to get in Officer Iske's line of sight, but he had pulled his weapon and was preparing to engage if necessary.

As he was listening to Officer Iske give commands he then heard two or three gunshots and saw his windshield pop, and he felt dust of the windshield glass hit his face. He then heard who he believed to be Officer Iske say, "oh, fuck" and recalled hearing Officer Jerothe yell out in pain. Officer Neumeyer then came back up and returned fire, firing several rounds in the direction of the front driver-side door of the Nissan through his windshield. Officer Neumeyer went on to say:

At that point, I'm thinking I'm going to die. I'm going to get shot in the head here because that's all this guy has exposed to me [*sic*] is my head sitting through the

windshield. So I kind of leaned down and as quickly as I could, I tried to climb out the passenger-side door of the vehicle. During this time, I'm hearing numerous shots. I'm hearing what sounds like rifle firing, and afterwards, I saw that Officer Jerothe had used his rifle.

When he climbed out the passenger door, Officer Neumeyer noticed a large pile of .223 caliber brass on the ground and knew that Officer Jerothe had used his rifle. Officer Neumeyer did not know where Officer Jerothe was at this point and feared that Officer Iske was dead because he had not responded to Officer Jerothe's cries asking if he was okay. After he got out of the vehicle, Officer Neumeyer fired several more rounds from the hood of his vehicle at the front driver's side door of the gray Nissan. Officer Neumeyer then decided to reload his weapon when additional shots were fired. Officer Jerothe then came around, and they both saw Officer Iske laying on his side, but conscious. Officer Neumeyer told Officer Jerothe that he would cover him so he could go to the aid of Officer Iske, grabbing Officer Jerothe's rifle, which was covered in blood. Officer Neumeyer never discharged Officer Jerothe's rifle.

Officer Neumeyer stated that after the shooting stopped, he saw the suspect on the ground outside the gray Nissan and a black handgun sitting near the rear passenger-side tire of the gray Nissan. After the suspect was taken into custody by other officers, Officer Neumeyer returned to Officer Jerothe and Officer Iske and could see that both had been shot during the incident.

Officer Neumeyer saw that Officer Iske's handgun was on the ground and he decided he wanted to retrieve it for Officer Iske. When he picked up Officer Iske's handgun, Officer Neumeyer noticed that it had some sort of malfunction, which he cleared.

Officer Brett Iske

Officer Iske was interviewed August 3, 2020, at 1:14 p.m. Officer Iske told Denver and Aurora police homicide investigators that he has been an Aurora police officer since 2012, prior to joining Aurora Police Department he had no prior law enforcement experience. During his time with the Aurora Police Department, he worked as a patrol officer and field training officer before being assigned to the SWAT Unit in 2019. He did not view his body worn camera footage before his interview.

On this evening, Officer Iske was working with other SWAT officers in an unmarked Aurora Police Department vehicle and was in the back seat behind the driver. He was dressed in an Aurora Police Department SWAT uniform and had with him his 9mm Glock 17 Gen 4 handgun with a magazine that holds 17 bullets. He also had one round in the chamber for total of 18 rounds in his handgun.

Officer Iske stated that as they were heading towards Green Valley Ranch they received information that a male had possibly run from the house where the red Audi had been contacted and that the suspect had been seen in the apartment complex to the northeast of the house. The suspect was described as a black male, wearing a red shirt with "frosted tips," which Officer Iske took to mean the tips of his hair were bleached blond.

When the officers turned into the apartment complex, Officer Iske saw the suspect walking from the fitness center and heading southwest. Officer Iske pointed him out to Officers Neumeyer and Jerothe, and Officer Neumeyer started to drive towards the suspect. As they approached the suspect, Officer Iske observed the suspect lift his shirt with his left hand and then saw the suspect's right hand go into his waistband. At this time, Officer Jerothe stated that he believed the male was going to carjack someone, and then Officer Iske saw a female run away from a vehicle acting very frantic and waving at them and pointing backwards to a vehicle. A vehicle then started to back out and Officer Neumeyer drove their vehicle into the rear driver-side quarter panel of the vehicle.

Once the vehicles came to rest, Officer Iske exited from behind the driver, immediately drew his weapon and pointed it at the driver's side door and window of the suspect vehicle. As soon as he cleared the door, Officer Iske stepped out into open view and began to give orders to the driver to put his hands on his head, although he could not see into the suspect vehicle because the windows were tinted. After Officer Iske gave a second order of commands to the driver, he immediately heard gunshots and saw bullet holes appearing in the suspect vehicle's driver-side window. Officer Iske went onto say:

And I see that and I comprehend that as he's shooting. He's shooting his gun. And then I feel like a heavy pressure on the left side of my body, and I then comprehend not only is he shooting, he has just shot me. So at — at that point, I remember having a sight picture. I have a red dot sight on my — on my handgun. I remember seeing a sight picture of the driver's window where the bullet holes were coming out of, and I remember seeing the sights bounce up and down a few times. I don't — I can't — I can't say I honestly remember shooting, but looking back, I see that as me, you know, basically trying to — doing what I can to stop the threat of the guy who is trying to kill me or my fellow officers or the lady that had just kind of ran . . .

Officer Iske then found cover behind a parked car and attempted to acquire his sights back on the driver's-side window and door of the suspect vehicle but noticed that his weapon had malfunctioned and that a piece of bullet was sticking out of the ejection port of his handgun. Officer Iske attempted to clear the malfunction but realized he could not close his right hand and was unable to cycle his weapon and fix the malfunction, although he attempted to do it three or four times, because he knew the threat still existed as gunshots continued to be fired.

As Officer Iske laid between two parked cars, he saw Officer Jerothe on the passenger side of the suspect vehicle firing his rifle into the suspect vehicle, eventually moving back behind the vehicle and out of his sight. Officer Iske was able to see under the suspect vehicle and then saw the suspect come onto the ground from the passenger side of the suspect vehicle and saw that the suspect was moving. This prompted Officer Iske to yell out to Officer Jerothe and Neumeyer that the suspect was out of the suspect vehicle and that he was moving around. Officer Iske then observed the suspect put his hands into the air, which Officer Iske took as the suspect was giving up at that point.

Officer Jerothe came to Officer Iske's aid and put a tourniquet on Officer Iske's left arm and checked him for any additional wounds. Officer Iske and Officer Jerothe, who was also shot during the incident, were transported to University Hospital in another SWAT vehicle.

Officer Iske sustained one gunshot wound that entered his left arm and exited out the left elbow, re-entering into his bicep and coming to rest in his tricep. The bullet was removed by medical personnel. A medical doctor at University Hospital opined that Officer Iske sustained serious bodily injury due to a substantial risk of protracted loss or impairment of the function of his left arm.

Officer Paul Jerothe

Officer Jerothe was interviewed July 31, 2020, at 1:35 p.m.. Officer Jerothe told Denver and Aurora police homicide investigators he has been an Aurora police officer since 2006, prior to joining the Aurora Police Department he had no prior law enforcement experience. During his time with the Aurora Police Department, he worked as a patrol officer and then was assigned to the SWAT team as a paramedic and then eventually as an operator. He did not view his body worn camera footage before his interview.

On this evening, Officer Jerothe was working with other SWAT officers in an unmarked Aurora Police Department vehicle and was in the front passenger seat of the vehicle. He was dressed in an Aurora Police Department SWAT uniform and had with him his 9mm Glock 17 handgun, although this weapon was not discharged during the incident. Officer Jerothe also had his Colt M4 rifle with a 30 round magazine, which Officer Jerothe downloaded to 28 rounds, with one in the chamber and 27 in the magazine.

Officer Jerothe told investigators that around 5:00 p.m. they heard over the radio that Denver SCAT had located the red Audi in Green Valley Ranch and that a suspect had run from that vehicle. Officer Jerothe recalled the suspect was described as a black male with blond hair, wearing a red shirt. They decided to go into the area and see if they could assist in locating the suspect who ran away.

When the officers pulled into the apartment complex, Officer Iske pointed out the suspect and Officer Jerothe saw that he was walking towards two females who were standing outside of a gray Nissan. Officer Jerothe observed the suspect put his right hand down the front of his pants as he approached the two females as if he were going for a gun. Officer Jerothe noted that the females' faces looked frantic and scared as the suspect approached, and one female made eye contact with the officers and pointed towards the vehicle. At this point Officer Jerothe believed that the suspect was going to carjack them, and that the officers needed to make sure that the suspect did not get away with the vehicle or endanger other members of the community should there be a pursuit.

After Officer Neumeyer hit the rear quarter panel of the vehicle with his vehicle, Officer Jerothe could see that there was one person in the vehicle in the driver's seat and could not see anyone else. Officer Jerothe immediately opened the front passenger door and as he was stepping out of vehicle, he heard the first gunshot and heard Officer Iske grunt or say "ahh." Officer Jerothe

believed that Office Iske had been shot and that he was down. He then heard more rapid shots and Officer Jerothe came around the backside of the suspect vehicle with his rifle and started firing into the suspect vehicle through the back window at the driver's seat.

Officer Jerothe stopped firing his weapon into the vehicle after five or more shots because he did not believe the suspect was firing at them anymore. Officer Jerothe went onto say:

After that first volley of fire from me, I didn't hear another gunshot, so I thought I had stopped — stopped him for shooting at us — which is all I wanted to do — and then I got shot. I felt my hand fly backwards and I got rocked backwards. I looked down at my hand and I saw that my index finger had been shot, and I — and I said — I remember thinking that's going to hurt later. I also knew that he — the suspect — had just shot me, and I was — and I was afraid he was going to kill me or he was going to kill Iske or Neumeyer. I knew that he was still trying to kill us and I needed to stop him.

Officer Jerothe then maneuvered around the passenger side of the suspect vehicle and could see that the suspect had turned towards him and was looking in his direction. Officer Jerothe then fired additional rounds in the driver's seat until there was no more shots coming from the suspect vehicle. He then went to back to the Expedition and saw that the front windshield of the vehicle was shot out, and he believed that Officer Neumeyer was dead. As he neared the Expedition, Officer Neumeyer tumbled out of the vehicle and told Officer Jerothe that he had not been hit. Officer Jerothe then put his rifle on the ground and rushed to the aid of Officer Iske, telling Officer Neumeyer to grab his rifle.

Officer Jerothe found Officer Iske and dragged him between two cars and started to provide first aid, putting a tourniquet on Officer Iske's left arm and then checking for any other injuries. Officer Jerothe was provided a towel to cover his hand and both officers were transported to University Hospital in another SWAT vehicle.

Officer Jerothe sustained two gunshot wounds from this incident. One bullet struck Officer Jerothe's right hand on the index finger. Another bullet struck Officer Jerothe in the chest, striking his soft body armor, and leaving a large abrasion on his skin. A medical doctor at University Hospital opined that Officer Jerothe sustained serious bodily injury due to a substantial risk of protracted loss or impairment of the function of his right hand and that he sustained a break and fracture of that hand.

Dontari Alexander Hudson

On July 29, 2020 at 9:55 a.m., Dontari Alexander Hudson was interviewed by Detective Eric Bueno and Detective Adam Golden at Denver Health Medical Center. Mr. Hudson was in-custody during this interview and it was audio and video recorded.

Mr. Hudson told the detectives that prior to the incident he was at 4766 N. Andes St. when the red Audi pulled up with one of his associates and a female. Shortly after the Audi arrived, other trucks came to the address and his associate took off running and he followed. Mr. Hudson said

he was armed with an AR15 rifle and semi-automatic Glock handgun which was black with green designs on it. Mr. Hudson said he discarded the AR15 in some bushes as he walked away from the house.

Mr. Hudson started back to house when he saw another truck coming towards him in the apartment complex. He then saw a lady with her daughter near a vehicle and he said he approached them to ask for a ride. Mr. Hudson said as he got close to them the lady became panicked and dropped the keys on ground, which he said was probably because she saw his gun on his hip. Mr. Hudson then picked up the keys and got into her vehicle and started to back out when he was hit by a large truck.

Mr. Hudson said the driver of the truck got out of the vehicle and pointed a gun and light into his eyes. Mr. Hudson said he fired one warning shot at first, but then fired several more times when they started to shoot at him. He said he saw one officer crawling on the ground after he was shot and knew that he had shot another officer in the chest. He said that he stopped firing his weapon when he realized that they were police officers. Mr. Hudson indicated he sustained approximately six gunshot wounds to his legs, neck, hand and back.

Owner of Nissan

The owner of the gray Nissan was interviewed on July 27, 2020, at 8:57 p.m. and told Detective Bueno that prior to the shooting incident she and her daughter had opened the doors to the gray Nissan to air it out because it was hot inside. She indicated that right after opening the doors she noticed a man coming towards her and when he got closer to her, he pulled a weapon from his waistband with his right hand. She said she gave him the keys and she told her daughter to run and they both ran to the south of where the vehicle was parked. She then saw what she believed was a police vehicle collide with her car. After the collision, she saw several officers exit the vehicle and the officers were yelling commands at the suspect and then shots started to be fired.

CRIME SCENE

Immediately after the shooting officers secured the scene with crime scene tape. At 6:40 p.m., the Crime Scene Unit responded to process the scene. Crime Scene investigators documented and photographed both involved vehicles.



Figure 2. front windshield of Ford Expedition.

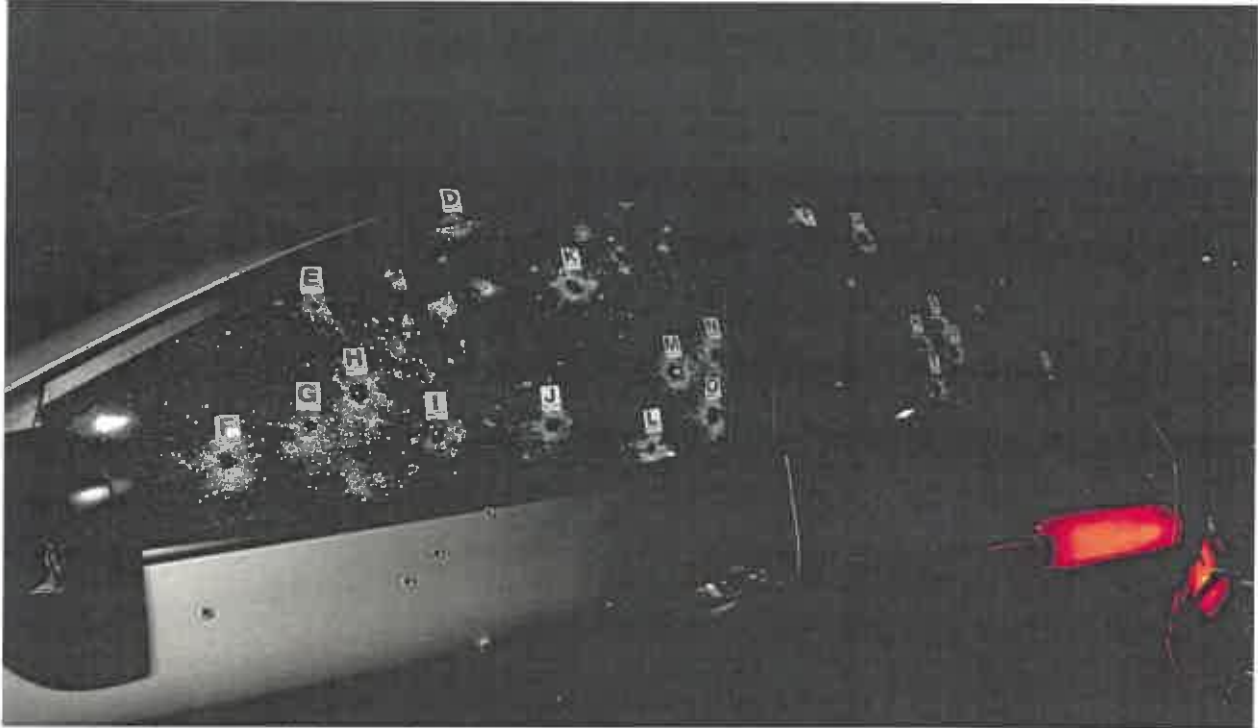


Figure 3. Driver's-side door of Nissan.



Figure 4. Passenger side of Nissan, markers 35 and 37 identify some of the shell casings recovered inside the vehicle.

While at the scene, Crime Scene investigators collected a black and green Glock 17 semi-automatic 9mm handgun which had no rounds in the chamber or its magazine from underneath the rear passenger side of a gray Nissan. They also collected a Palmetto PA-15 223 caliber rifle from a bush in the apartment complex. They also recovered a black firearm magazine from the front passenger door of the Expedition that had 10 live rounds of Winchester 9mm Luger +P caliber cartridges.



Figure 5. Glock semi-automatic handgun recovered from rear of Nissan.



Figure 6 Palmetto PA-15 223 caliber rifle in bush to the north of shooting scene.

Crime Scene investigators responded to University Hospital and recovered the following handguns, magazines and live rounds from the officers: Officer Jerothe - Glock 17 semi-automatic handgun with (seventeen) 17 live rounds in the magazine and one (1) live round in the chamber; and, Officer Iske - Glock 17 semi-automatic handgun with no magazine and one (1) live round jammed in the chamber. At police headquarters Crime Scene investigators recovered from Officer Neumeyer his Glock 17 semi-automatic handgun, which had one (1) live

Winchester 9mm Luger +P caliber cartridge in its chamber and fifteen (15) live Winchester 9mm Luger +P caliber cartridges in its magazine. Officer Neumeyer also had possession of Officer Jerothe's Colt M4LE rifle, which had one (1) Winchester 223 caliber cartridge in its chamber and nine (9) Winchester 223 caliber cartridges in its magazine.

Numerous shell casings were recovered from outside and inside the two involved vehicles, specifically: fifteen (15) Winchester 223 caliber cartridges-located outside the two vehicles in the road way behind the Nissan or on the passenger side of the Nissan in the road, sidewalk or grassy area; nine (9) Winchester 9mm Luger +P caliber cartridges-located inside the Expedition or outside the Expedition; nine (9) Speer 9mm Luger cartridges and two (2) Federal 9mm Luger cartridges-located inside the Nissan. Bullet fragments were collected from both vehicles (inside and out), other vehicles in the parking lot, several apartments or garages, and one bullet fragment was surgically removed from Officer Iske.

Forensic analysis of the shell casings revealed that eight (8) of the Winchester 9mm Luger +P caliber cartridges were fired from Officer Neumeyer's Glock semi-automatic handgun and one (1) of the Winchester 9mm Luger +P caliber cartridges was fired from Officer Iske's Glock semi-automatic handgun (located in front of gray Nissan). The Speer 9mm Luger cartridges and Federal 9mm Luger cartridges were identified as being fired from the black and green Glock 17 semi-automatic handgun. The Winchester 223 caliber cartridges were excluded as being fired from the Palmetto PA-15 and had the same class and characteristics as Officer Jerothe's Colt M4LE rifle. The bullet fragments could not be identified as having been fired from any of the weapons involved, although they had the same class characteristics.

Body worn camera footage from Officer Neumeyer, Officer Iske and Officer Jerothe did not depict the shooting incident as none of the officers activated their body worn cameras until after the shooting.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes. The justification of using physical force in self-defense is described in C.R.S. § 18-1-704. As pertinent to this case, C.R.S. § 18-1-704 (1) states:

... a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

These justifications are "affirmative defenses." This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was *not* justified. Accordingly, the question I must consider is: **Is there enough evidence of criminal conduct that a jury would**

find, beyond a reasonable doubt, that Officer Neumeyer, Officer Jerothe or Officer Iske acted without lawful justification?

After a thorough review of the evidence, I conclude that all three officers were legally justified in firing their weapons at Mr. Hudson as they acted in self-defense or in defense of others.

Prior to arriving at the complex all three officers were aware that SSTF was attempting to contact individuals who had been involved in a series of armed robberies in the Denver Metro area and that the suspects may be armed. As the officers pulled into the apartment complex, they saw Mr. Hudson approach the owner of a gray Nissan and pull a weapon out of his waistband before getting into the vehicle after the owner fled. At this moment, all three officers were aware that Mr. Hudson was armed and that he was willing to use that weapon to carjack the victim.

Upon colliding with the gray Nissan, Officer Iske immediately got out of the Expedition and drew his weapon and gave verbal commands to Mr. Hudson to show his hands. The owner of the Nissan corroborated Officer Iske giving verbal commands before the shooting. It is at that moment that Mr. Hudson took the first shot at Officer Iske, shooting him in his left arm. This first shot is confirmed by both Officer Neumeyer and Officer Jerothe who saw Officer Iske get out of the Expedition and give verbal commands to Mr. Hudson before Officer Iske cried out as if he had been shot. Even Mr. Hudson confirmed that he fired the first shot at whom he believed was the driver of vehicle and that he later saw Officer Iske crawling away after he started firing his weapon. The single shot by Officer Iske was legally justified since the first shot was fired by Mr. Hudson and wounded Officer Iske causing him great bodily injury.

Officer Neumeyer drew his weapon after Officer Iske got out and was immediately fired upon while he was seated in the driver's seat. Officer Neumeyer was trapped in the vehicle and the only way to avoid being shot was to attempt to take out the threat posed by Mr. Hudson shooting at him. In addition, Officer Neumeyer believed that Officer Iske had been shot and was possibly laying exposed to being fired on again by Mr. Hudson, and therefore it was necessary for him to fire at Mr. Hudson to protect Officer Iske who may have been unable to protect himself after being shot by Mr. Hudson. The shots fired by Officer Neumeyer were legally justified because Officer Neumeyer knew Mr. Hudson intended to shoot at him and had mostly likely shot Officer Iske.

When Officer Jerothe exited the passenger side of the Expedition, he quickly realized that shots were being fired at Officer Iske by Mr. Hudson and that Officer Neumeyer was trapped in the driver's seat. In order to protect Officer Iske, Officer Neumeyer and himself, Officer Jerothe fired his rifle into the driver's side seat of the gray Nissan to get Mr. Hudson to stop firing at them. After the first volley of shots, Officer Jerothe mistakenly believed that the threat had ended until he was shot by Mr. Hudson in the right hand and chest. After he was shot, Officer Jerothe knew that Mr. Hudson continued to be a threat to him and the other officers, and that he needed to continue firing at Mr. Hudson. The 15 shots fired by Officer Jerothe were legally justified to protect himself and the officers from Mr. Hudson firing his weapon at them.

The eleven (11) spent 9mm shell cartridges found in the gray Nissan, which were identified as being fired from Mr. Hudson's black and green Glock semi-automatic handgun, further corroborate the fact that Mr. Hudson intended to cause harm to the officers.

For these reasons, Officer Neumeyer, Officer Iske and Officer Jerothe reasonably believed that a lesser degree of force would have been inadequate and that they were in imminent danger of being killed or receiving additional serious bodily injury. Pursuant to Colorado law, they had a lawful and justifiable claim of self-defense and were legally justified in firing at Mr. Hudson and injuring him.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth McCann", with a long horizontal flourish extending to the right.

Beth McCann
Denver District Attorney

cc: Aurora Police Department Chief Vanessa Williams; Denver Police Department Deputy Chief Barb Archer; Denver Police Department Commander Mark Chuck; Denver Police Department Major Crimes Lieutenant Matthew Clark; Denver Police Department Major Crimes Sergeants Scott Hagan, Brock Ellerman, and Scott Murphy; Denver Police Department Homicide Detectives Eric Bueno and Adam Golden; Aurora Police Department Officers Michael Neumeyer, Paul Jerothe and Brett Iske; Denver City Attorney Kristin Bronson, and Denver Office of the Independent Monitor Nicholas E. Mitchell.